

ORIGINAL



0000138059

RECEIVED

2012 JUL 11 P 4: 52

AZ CORP COMMISSION
DOCKET CONTROL

1 OFFICE OF THE CITY ATTORNEY
GARY VERBURG, City Attorney
2 State Bar No. 005515
200 West Washington, Suite 1300
3 Phoenix, Arizona 85003-1611
Telephone (602) 262-6761
4 Fax (602) 524-7524
Email: law.civil.minute.entries@phoenix.gov

5
6 CYNTHIA S. CAMPBELL, State Bar No. 016874
Assistant City Attorney
Email: cynthia.campbell@phoenix.gov

7 Attorneys for Applicant City of Phoenix

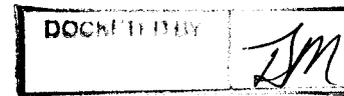
8 BEFORE THE ARIZONA CORPORATION COMMISSION

9 COMMISSIONERS:

10 GARY PIERCE, Chairman
11 SANDRA D. KENNEDY
12 PAUL NEWMAN
13 BOB STUMP
14 BRENDA BURNS

Arizona Corporation Commission
DOCKETED

JUL 17 2012



15 IN THE MATTER OF THE APPLICATION
16 OF THE CITY OF PHOENIX TO CLOSE
17 EIGHT PUBLIC GRADE CROSSINGS ON
18 11TH AVENUE BETWEEN APACHE
STREET AND GRANT STREET, IN THE
CITY OF PHOENIX, MARICOPA COUNTY,
ARIZONA, AT DOT NUMBERS 928161M,
025839L, 928160F, 025837X, 936631D,
025835J WEST, 025835J EAST, 025833V

DOCKET NO. RR-02635B-12-0251

**NOTICE OF FILING OF DIRECT
TESTIMONIES OF BELINDA
CUMMINGS AND KERRY
WILCOXON**

19 The City of Phoenix (Phoenix), through its City Attorney, Gary Verburg, by his
20 Assistant, Cynthia S. Campbell, hereby gives Notice of the filing of the Written Testimonies
21 of Phoenix employees, Kerry Wilcoxon and Belinda Cummings in support of its Application
22 to Close BNSF Public Grade Crossings.

OFFICE OF THE CITY ATTORNEY
GARY VERBURG, City Attorney
200 W. WASHINGTON, SUITE 1300
PHOENIX, ARIZONA 85003-1611

OFFICE OF THE CITY ATTORNEY
GARY VERBURG, City Attorney
200 W. WASHINGTON, SUITE 1300
PHOENIX, ARIZONA 85003-1611

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

RESPECTFULLY SUBMITTED this 17th day of July, 2012.

GARY VERBURG, City Attorney

By *Cynthia S. Campbell*
CYNTHIA S. CAMPBELL
Assistant City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Original and 13 Copies of the foregoing hand delivered this 17th day of July, 2012 to:

Docket Control
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Marc E. Stern
Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Copies of the foregoing mailed this 17th day of July, 2012, to:

Brian Lehman
Railroad Safety Supervisor
Arizona Corporation Commission
Railroad Safety Section
2200 N. Central Ave., Suite #300
Phoenix, AZ 85004

Janice Alward
Chief Legal Counsel
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

1 Melvin Thomas
Manager, Public Projects
2 BNSF Railway
740 East Carnegie Drive
3 San Bernardino, California 92408

4 By K. Brutto
5 CSC/kb:979747v1

OFFICE OF THE CITY ATTORNEY
GARY VERBURG, City Attorney
200 W. WASHINGTON, SUITE 1300
PHOENIX, ARIZONA 85003-1611

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1 OFFICE OF THE CITY ATTORNEY
GARY VERBURG, City Attorney
2 State Bar No. 005515
200 West Washington, Suite 1300
3 Phoenix, Arizona 85003-1611
Telephone (602) 262-6761
4 Fax (602) 524-7524
Email: law.civil.minute.entries@phoenix.gov

5
6 CYNTHIA S. CAMPBELL, State Bar No. 016874
Assistant City Attorney
Email: cynthia.campbell@phoenix.gov

7
8 Attorneys for Applicant City of Phoenix

BEFORE THE ARIZONA CORPORATION COMMISSION

9
10 COMMISSIONERS:

11 GARY PIERCE, Chairman
12 SANDRA D. KENNEDY
PAUL NEWMAN
13 BOB STUMP
BRENDA BURNS

14 IN THE MATTER OF THE APPLICATION
15 OF THE CITY OF PHOENIX TO CLOSE
EIGHT PUBLIC GRADE CROSSINGS ON
16 11TH AVENUE BETWEEN APACHE
STREET AND GRANT STREET, IN THE
17 CITY OF PHOENIX, MARICOPA COUNTY,
ARIZONA, AT DOT NUMBERS 928161M,
025839L, 928160F, 025837X, 936631D,
025835J WEST, 025835J EAST, 025833V

DOCKET NO. RR-02635B-12-0251

**DIRECT TESTIMONY OF
BELINDA CUMMINGS
ON BEHALF OF CITY OF PHOENIX
JULY 16, 2012**

Q. PLEASE STATE YOUR NAME, TITLE, BUSINESS ADDRESS AND TELEPHONE NUMBER.

A. My name is Belinda Cummings. I am a Civil Engineer II employed by the City of Phoenix, Street Transportation Department, Design and Construction Management. My business address is 1034 East Madison Street, Phoenix, Arizona 85034. My business telephone is (602) 534-7067.

Q. PLEASE DESCRIBE YOUR PRIMARY RESPONSIBILITIES FOR THE CITY OF PHOENIX.

A. My primary responsibility for the City of Phoenix is to manage the design of Capital Improvement projects. This involves working with design consultants, utility companies, other City Department, and the public. I am responsible for insuring that the design for the projects meets the City's standards.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to describe the general condition of the area within the 11th Avenue I-17 to Grant Street Roadway Reconstruction Project ("project area"), its community uses and the use of the railroad track on 11th Avenue.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

A. Yes. I have testified previously in support of Applications of the City of Phoenix to close railroad public grade crossings.

Q. ARE YOU FAMILIAR WITH THE CITY OF PHOENIX' REQUESTED RELIEF IN THIS APPLICATION?

A. Yes. The City of Phoenix is requesting that the Arizona Corporation Commission ("ACC") allow the City of Phoenix ("Phoenix") to close eight existing public grade Burlington Northern Santa Fe Railroad ("BNSF") crossings on the 11th Avenue spur located on 11th Avenue between Grant and Apache Streets in the City of Phoenix, Arizona. These closings are part of the 11th Avenue Reconstruction Project.

Q. IS THERE A DIAGRAM OF THE AREA WITH THE CHANGES AND CLOSURES TO THE PUBLIC GRADE CROSSINGS?

Yes. Exhibits A, D, and E are maps of the area (vicinity, aerial and street maps respectively). Exhibit B is a Track Alignment Diagram which illustrates the changes and closures to the public grade crossings along 11th Avenue between Grant Street and I-17 Maricopa Freeway, and Exhibit C is a Railroad Crossing Data Sheet which provides specifications of the changes and the allocation of costs between Phoenix and BNSF.

Q. WHY DO THE CROSSINGS NEED TO BE CLOSED?

A. The crossings need to be closed primarily to improve traffic control in the neighborhood and for safety reasons. By minimizing the locations where vehicles can cross the tracks, traffic control is improved. As a result of BNSF's failure to maintain the roadway between the rails and two feet on either side of the rails, it is unsafe for vehicles to cross the tracks. By minimizing the locations where vehicles can cross, precast concrete track crossing panels can be installed at the remaining open crossings. With the precast concrete track crossing panels, there will no longer be a problem with heaving asphalt. BNSF will no

longer need to maintain the asphalt between the rails and on either side of the rails at the vehicle crossings. Phoenix will be able to do maintenance of the asphalt without interfering with the tracks at the vehicle crossings.

Q. WHAT IS THE CONSTRUCTION PHASING FOR THE 11TH AVENUE RECONSTRUCTION PROJECT?

A. In preparation for closing the public grade crossings, on September 1, 2010, Phoenix issued a contract to Arizona Public Service (“APS”) to install street lights on both sides of 11th Avenue. A Notice to Proceed for Banicki Construction was issued on October 24, 2011. This phase of construction included widening the curb returns at the remaining open crossings to accommodate truck traffic, constructing ramps in compliance with the Americans with Disabilities Act (“ADA”) at all corners, constructing in-fill sidewalks, and installing storm drains. Phoenix crews also revised the garbage pick up to be done on the streets instead of in the alleys.

The next phase of construction will be to construct curbs on the east and west side of the track rails seven feet from the center of the tracks to the face of the curbs between Mohave and Grant Streets. This phase is scheduled to begin on or about June 18, 2012. This phase will only construct the curb without closing any alley or street public grade crossings.

The final phase of construction will be to construct the curb that closes the three alleys and four street crossings (there are two crossings at the intersection of 11th Avenue and Tonto Street), and a mill and overlay of the asphalt from Grant Street to the I-17 Maricopa Freeway. The final phase of construction will begin after Phoenix receives an Opinion and Order from the ACC to close the eight public grade crossings.

Sometime after Phoenix's contractor begins construction of the curb adjacent to the track, BNSF will install the precast concrete track crossing panels at the remaining open crossings and repave the track switch at Mohave Street. Phoenix and BNSF are still negotiating the terms and conditions of the Grade Crossing Construction and Maintenance Agreement, a copy of which is attached as Exhibit F.

Q. HOW WILL PHOENIX AND BNSF MAINTAIN THE RESULTING ROADWAY AND TRACK ON 11TH AVENUE?

A. Phoenix will be responsible for constructing the curb and milling and overlay of the 11th Avenue roadway. Phoenix will compensate BNSF for flagging services required for this work if BNSF is not onsite during the construction. Phoenix will compensate BNSF to furnish and install precast concrete track panels to lengthen the remaining open public grade crossings. Phoenix will compensate BNSF for modifications needed for the signal system due to the lengthened public grade crossings. Phoenix will be responsible for maintaining the asphalt outside of the track curbs and the concrete crossing track panels.

BNSF also will be responsible for the costs associated with furnishing and installing concrete crossing track panels for the original width of the remaining open public grade street crossings. BNSF will be responsible for the costs associated with repaving the track switch at Mohave Street. BNSF will be responsible for flagging costs while they are working onsite. Furthermore, BNSF will be responsible for the costs to remove the existing gates at Cocopah Street, and will be responsible for maintaining the area between the track curbs, the concrete crossing track panels, the asphalt pavement at the switch at Mohave Street, and the asphalt crossing at Apache Street.

Q. HOW WILL THE 11TH AVENUE RECONSTRUCTION PROJECT BE FUNDED?

A. Phoenix and BNSF will fund the project.

Q. WHAT HAS BEEN THE PUBLIC INVOLVEMENT IN THE 11TH AVENUE RECONSTRUCTION PROJECT PRIOR TO FILING THIS APPLICATION?

A. Phoenix has conducted open meetings on the following dates:

June 14, 2006
September 15, 2006
October 3, 2006
September 30, 2009

Phoenix invited the public and conducted the following open houses:

April 12, 2011 (open house invitations delivered)
April 27, 2011 (open house)
September 16, 2011 (open house invitations delivered)
October 4, 2011 (open house)
October 14, 2011 (construction notices delivered)
April 20, 2012 (construction update notices delivered)
May 10, 2012 (Community Action Team Meeting Project Update)
May 25, 2012 (open house and construction updated notices delivered)
June 5, 2012 (open house)

Q. HAVE THERE BEEN ANY RECENT TRAFFIC STUDIES DONE IN THE PROJECT AREA? IF NOT, WHY NOT?

A. There are no current traffic studies for the project area. Traffic studies would provide limited useful information as this is a well-developed area with minimal prospects of future development.

Q. WAS GRADE SEPARATION CONSIDERED FOR THE 11TH AVENUE RECONSTRUCTION PROJECT? WHAT WOULD BE THE ESTIMATED COSTS FOR GRADE-SEPARATED CROSSINGS?

A. No studies were performed to evaluate whether an overpass was required. This is a well-developed, primarily residential neighborhood. The respective costs for each grade-separated crossing are attached as Exhibit CW1.8. The FHWA Grade Separation Guidelines Table (2007 revised second edition Railroad Highway Grade-Crossing Handbook, page 151), is completed for each crossing proposed for closure. It is attached as Exhibit CW1.19. In addition to the information provided in the exhibits, grade separations would have the following undesirable consequences:

1. Access to residences and businesses on one or both sides of the cross streets would be eliminated because of the length of the overpass approaches to the tracks.
2. Additional right-of way would be needed on the north or south side of the cross streets and cross alleys, which would result in the demolition of homes and/or businesses.
3. None of the proposed crossings to be closed meet any of the requirements in the FHWA, Grade Separation Guidelines as shown in Exhibit CW1.19.
4. The western intersection of 11th Avenue and Tonto Street is a "T" intersection. If a grade-separated crossing were required, the east ramp to the overpass would be in the middle of the Matthew Henson Project.
5. The eastern intersection of 11th Avenue and Tonto Street is also a "T" intersection. If a grade-separated crossing were required, the west ramp to the overpass would be in the middle of the Matthew Henson Project.
6. Sherman Street is a "T" intersection. If a grade-separated crossing were required, the east ramp to the overpass would be in the middle of the Matthew Henson Project.
7. If the tracks were built on an overpass, the usage of the properties on either the east or west side of 11th Avenue would be lost.
8. Overpasses at the alley crossings would cause access problems for utility maintenance in the alleys. Utilities could require relocation to 11th Avenue.
9. Grade separations would destroy the integrity of the neighborhood. The

only way it would be beneficial to construct grade-separated crossings would be to do thirteen track crossings from Grant Street to the I-17 Maricopa Freeway. Mohave Street cannot be grade-separated because it has a switch in it.

Q. WHAT IS THE DISTANCE BETWEEN PUBLIC GRADE CROSSINGS TO THE NORTH AND SOUTH OF THE CROSSINGS TO BE CLOSED AND WHAT IS THE CROSSING PROTECTION INSTALLED AT THE CROSSINGS?

A. All crossings in the project area are at-grade. The distances between the remaining crossings after closure, and the crossing protection installed at the current public grade crossings are identified in Exhibits CW1.5 and CW1.6.

Q. HOW MANY TRAINS MOVE THROUGH THE CROSSINGS ON 11TH AVENUE ON A DAILY BASIS? PLEASE PROVIDE INFORMATION ON THE SPEED OF THE TRAINS, THE TYPE OF MOVEMENTS MADE (I.E., THRU FREIGHT OR SWITCHING), AND WHETHER THIS IS A PASSENGER TRAIN ROUTE.

A. According to information provided by BNSF, there are usually two BNSF trains moving through the crossings every day, Monday through Saturday. Occasionally, trains are switched at Mohave Street to deliver materials to the Phoenix Brick Yard located at the southeast corner of 11th Avenue and Mohave Street. The approximate speed of the trains is 10 miles per hour. There are no passenger trains on this line.

Q. BASED ON THE CURRENT SINGLE TRACK CONFIGURATION ON 11TH AVENUE AND THE CROSSINGS PROPOSED FOR CLOSURE, WHAT IS THE DAILY TRAFFIC BLOCKING DELAY PER TRAIN?

A. The information requested can be found in Exhibit CW1.20. It includes the time in which vehicular traffic is delayed to allow the train to pass at a crossing and due to trains stopped on the track for any purpose. The delay is measured from the time when the warning devices are activated at the crossing to the time the warning devices are reset.

Q. WHAT IS THE CURRENT ZONING IN THE VICINITY OF THE PROJECT AREA? ARE NEW HOUSING DEVELOPMENTS, INDUSTRIAL PARKS OR ANY OTHER DEVELOPMENT PROJECTS PENDING?

A. According to Phoenix' current Zoning Map, the zoning in the project area is primarily residential. See Exhibit CW1.9A for the Zoning Map and Exhibit CW1.9B for the Zoning Abbreviations. At this time, there are no new developments planned in the vicinity of the project area.

Q. PLEASE PROVIDE THE NAMES AND LOCATIONS OF ALL SCHOOLS (ELEMENTARY, JUNIOR HIGH AND HIGH SCHOOL) WITHIN TWO MILES OF THE PROJECT AREA.

A. The following schools, their respective addresses and approximate distance from the project area are as follows:

Paul Laurence Dunbar Elementary School, 707 West Grant Street (740 feet)
Mary McLeod Bethune Elementary School, 1310 S. 15th Avenue (1,530 feet)
Phoenix Union Bioscience High School, 512 East Pierce Street (1.62 miles)
Franklin Police and Fire High School, 1645 West McDowell Road (1.79 miles)

Q. ARE THERE ANY SCHOOL BUS ROUTES THAT USE THESE CROSSINGS?

A. According to Phoenix Elementary School District Transportation staff, there is one special education bus that travels through the project area twice a day.

Q. PLEASE PROVIDE THE NAMES AND LOCATIONS OF ALL HOSPITALS IN THE VICINITY OF THE PROJECT AREA, THEIR DISTANCE FROM THE CROSSINGS AND THE USE OF THE CROSSINGS BY EMERGENCY SERVICE VEHICLES.

A. The nearest hospitals, including the distance from the project area, are as follows:

Banner Good Samaritan Medical Center, 1111 East McDowell Road
(approximately 4 miles)
St. Luke Medical Center, 1800 East Van Buren Street
(approximately 4 miles)
St. Joseph Hospital, 350 West Thomas Road
(approximately 4 miles)

According to Phoenix's Roadway Classification Map, the crossings proposed to be closed are local streets. They are two lane roads. Buckeye Road is the only road within the project area which routinely would be used for emergency vehicles, as it is classified as an arterial roadway. There is no proposal to close the crossing at Buckeye Road.

Q. DO VEHICLES TRANSPORTING HAZARDOUS MATERIALS UTILIZE THE CROSSINGS AND HOW MANY TIMES A DAY MIGHT THE VEHICLES USE THE CROSSINGS?

A. Neither 11th Avenue nor any of the crossings proposed for closure are registered in the National Hazardous Material Route Registry. However, based on information from the Arizona Department of Transportation, there are no restrictions on vehicles transporting hazardous materials on these roadways. Phoenix is unable to provide specific traffic counts for vehicles transporting hazardous materials on these roadways.

Q. WHAT IS THE POSTED VEHICULAR SPEED LIMIT FOR THE ROADWAYS?

A. According to the Phoenix Speed Limit Map, the posted speed on 11th Avenue, Cocopah Street, Yuma Street, Tonto Street and Sherman Street is 25 miles per hour.

Q. ARE THERE ANY PUBLIC TRANSIT ROUTES WHICH UTILIZE THE CROSSINGS PROPOSED FOR CLOSURE?

A. According to the route maps provided by Valley Metro, there no bus routes utilize the crossings proposed for closure.

Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?

A. Yes.

CSC/kb:979912v1

1 OFFICE OF THE CITY ATTORNEY
GARY VERBURG, City Attorney
2 State Bar No. 005515
200 West Washington, Suite 1300
3 Phoenix, Arizona 85003-1611
Telephone (602) 262-6761
4 Fax (602) 524-7524
Email: law.civil.minute.entries@phoenix.gov

5
6 CYNTHIA S. CAMPBELL, State Bar No. 016874
Assistant City Attorney
Email: cynthia.campbell@phoenix.gov

7
8 Attorneys for Applicant City of Phoenix

BEFORE THE ARIZONA CORPORATION COMMISSION

9
10 COMMISSIONERS:

11 GARY PIERCE, Chairman
12 SANDRA D. KENNEDY
PAUL NEWMAN
13 BOB STUMP
BRENDA BURNS

14 IN THE MATTER OF THE APPLICATION
15 OF THE CITY OF PHOENIX TO CLOSE
EIGHT PUBLIC GRADE CROSSINGS ON
16 11TH AVENUE BETWEEN APACHE
STREET AND GRANT STREET, IN THE
17 CITY OF PHOENIX, MARICOPA COUNTY,
ARIZONA, AT DOT NUMBERS 928161M,
025839L, 928160F, 025837X, 936631D,
025835J WEST, 025835J EAST, 025833V

DOCKET NO. RR-02635B-12-0251

**DIRECT TESTIMONY OF
KERRY WILCOXON
ON BEHALF OF CITY OF PHOENIX
JULY 16, 2012**

Q. PLEASE STATE YOUR NAME, TITLE, BUSINESS ADDRESS AND TELEPHONE NUMBER.

A. My name is Kerry Wilcoxon. I am a Traffic Engineer III employed by the City of Phoenix, Street Transportation Department, Safety and Neighborhood Traffic Section. My business address is 200 West Washington Street, Phoenix, Arizona 85003. My business telephone is (602) 262-4613.

Q. PLEASE DESCRIBE YOUR PRIMARY RESPONSIBILITIES FOR THE CITY OF PHOENIX.

I supervise the Safety and Neighborhood Traffic Section of the Department. Among other duties, I am responsible for tracking and analyzing traffic crash data to determine if traffic crash patterns exist. If patterns are identified, I am then responsible for determining the cause of the pattern and for developing recommendations for engineering solutions to eliminate or reduce the risk of collisions in the future.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

A. Yes. I have testified previously in support of Applications of the City of Phoenix to close railroad public grade crossings.

Q. WHAT IS THE CITY OF PHOENIX'S REQUESTED RELIEF IN THIS APPLICATION?

A. The City of Phoenix is requesting that the Arizona Corporation Commission (“ACC”) allow the City of Phoenix (“Phoenix”) to close eight existing public grade Burlington Northern Santa Fe Railroad (“BNSF”) crossings on the 11th Avenue spur located on 11th Avenue between Grant and Apache Streets in the City of Phoenix, Arizona. These closings are part of the 11th Avenue I-17 to Grant Street Roadway Reconstruction Project (“11th Avenue Reconstruction Project”).

Q. WHICH PUBLIC GRADE CROSSINGS IS PHOENIX PROPOSING TO CLOSE?

A. Phoenix is proposing to close the following eight public grade street crossings between Grant and Apache Streets:

- Intersection of 11th Avenue and Sherman Street (DOT 025-833-V)
- Intersection of 11th Avenue and Tonto Street, two grade crossings on the east and one on the west side of 11th Avenue (DOT 025-835-J)
- Intersection of 11th Avenue and an Alley located between Buckeye Road and Yuma Street (DOT 936-631-D)
- Intersection of 11th Avenue and Yuma Street (DOT 025-837-X)
- Intersection of 11th Avenue and Alley located between Pima and Cocopah Streets (DOT 928-160-F)
- Intersection of 11th Avenue and Cocopah Street (DOT 025-839-L)
- Intersection of 11th Avenue and Two Alleys located between Cocopah Streets and Mohave Streets (North Alley DOT 928-161-M; South Alley is DOT 025-841-M)

Q. WHAT PUBLIC GRADE CROSSINGS ON 11TH AVENUE BETWEEN GRANT STREET AND I-17 MARICOPA FREEWAY WILL REMAIN AND WHAT IS THE EXISTING SURFACE TYPE OF EACH ONE?

A. The remaining public grade crossings and surface type on 11th Avenue between Grant Street and I-17 Maricopa Freeway are:

- Intersection of 11th Avenue and Grant Street (concrete) (DOT 025-832-N)

Intersection of 11th Avenue and Hadley Street (concrete) (DOT 025-834-C)
Intersection of 11th Avenue and Buckeye Road (concrete) (DOT 025-836-R)
Intersection of 11th Avenue and Pima Street (concrete) (DOT 025-838-E)
Intersection of 11th Avenue and Alley between Mohave (asphalt) (DOT 025-840-F)
Intersection of 11th Avenue and Apache Streets (asphalt) (DOT 025-841-M)
Intersection of 11th Avenue and Apache Street (asphalt) (DOT 025-842-U)
Intersection of 11th Ave and Mohave Street

Q. IS PHOENIX PROPOSING TO CHANGE THE SURFACE TYPE OF ANY REMAINING PUBLIC GRADE CROSSINGS?

A. Yes. Phoenix is proposing to change the following public grade crossings to a concrete surface:

Intersection of 11th Avenue and Hadley Street (DOT 025-834-C)
Intersection of 11th Avenue and Pima Street (DOT 025-838-E)
Intersection of 11th Avenue and Mohave Street (DOT 025-840-F)

Q. IS THERE ANY OTHER INFORMATION YOU CAN PROVIDE IN SUPPORT OF THE APPLICATION?

A. The Current Average Daily Traffic (ADT) Counts and Current Level of Service (LOS) are included as Exhibits CW1.1 and CW1.2.

Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?

A. Yes.

CSC/kb:979862v1

ESTIMATE FOR GRADE-SEPARATED CROSSINGS

PROPOSED CROSSINGS TO BE CLOSED				
	OVERPASS		ROADWAY	
	NUMBER	OVERPASS	RAMP	TOTAL
LOCATION	OF LANES	COSTS	COSTS	COSTS
Alley south of Cocopah Street	1 Lane	\$5,000,000.00	\$2,000,000.00	\$7,000,000.00
Cocopah Street	2 lanes	\$10,000,000.00	\$4,000,000.00	\$14,000,000.00
Alley south of Pima Street	1 Lane	\$5,000,000.00	\$2,000,000.00	\$7,000,000.00
Yuma Street	2 Lanes	\$10,000,000.00	\$4,000,000.00	\$14,000,000.00
Alley south of Buckeye Road	1 Lane	\$5,000,000.00	\$2,000,000.00	\$7,000,000.00
Tonto Street	2 Lanes	\$10,000,000.00	\$4,000,000.00	\$14,000,000.00
Sherman Street	2 Lanes	\$10,000,000.00	\$4,000,000.00	\$14,000,000.00
	SUBTOTAL	\$55,000,000.00	\$22,000,000.00	\$77,000,000.00

ADDITIONAL CROSSINGS THAT WOULD NEED TO BE GRADE-SEPARATED				
	OVERPASS		ROADWAY	
	NUMBER	OVERPASS	RAMP	TOTAL
LOCATION	OF LANES	COSTS	COSTS	COSTS
Apache Street	2 Lanes	\$10,000,000.00	\$4,000,000.00	\$14,000,000.00
Alley south of Mohave Street	1 Lane	\$5,000,000.00	\$2,000,000.00	\$7,000,000.00
Pima Street	2 Lanes	\$10,000,000.00	\$4,000,000.00	\$14,000,000.00
Buckeye Road	5 Lanes	\$25,000,000.00	\$10,000,000.00	\$35,000,000.00
Hadley Street	2 Lanes	\$10,000,000.00	\$4,000,000.00	\$14,000,000.00
Grant Street	5 Lanes	\$25,000,000.00	\$10,000,000.00	\$35,000,000.00
	SUBTOTAL	\$85,000,000.00	\$34,000,000.00	\$119,000,000.00

TOTAL PROJECT COSTS \$140,000,000.00 \$56,000,000.00 \$196,000,000.00

These estimates do not include right-of-way costs, structure demolition costs, home/business relocation costs, and/or utility relocations.

EXHIBIT CW1.8

CW1.19 FHWA - GRADE SEPARATION GUIDELINES

Highway-rail grade crossings should be considered for grade separation or otherwise eliminated across the railroad right of way whenever one or more of the following conditions exist:

BNSF Railroad 11th Avenue, Segment 7620, Milepost 193.35 to Milepost 194.85

	CROSSING 1	CROSSING 2	CROSSING 3	CROSSING 4	CROSSING 5	CROSSING 6	CROSSING 7	CROSSING 8
Street Name:	Alley South of Cocopah Street	Cocopah Street	Alley South of Pima Street	Yuma Street	Alley South of Buckeye Road	Tonto Street, West	Tonto Street, East	Sherman Street
DOT Number:	928-161AM	025-839-L	928-160-F	025-837-X	936-631-D	025-835-J	025-835-J	025-833-V
Milepost No.:	0193.72	0193.69	0193.66	0193.51	0193.42	0193.32	0193.32	0193.18
This highway is a part of the designated Interstate Highway System	NO	NO	NO	NO	NO	NO	NO	NO
This highway is otherwise designed to have controlled access	NO	NO	NO	NO	NO	NO	NO	NO
The posted highway speed equals or exceed 70 mph	NO	NO	NO	NO	NO	NO	NO	NO
AADT exceeds 100,000 in urban areas or 50,000 in rural areas	NO	NO	NO	NO	NO	NO	NO	NO
Maximum authorized train speed exceeds 110 mph	NO	NO	NO	NO	NO	NO	NO	NO
An average of 150 or more trains per day or 300 million gross tons/year	NO	NO	NO	NO	NO	NO	NO	NO
Crossing exposure (trains/day x AADT) exceeds 1M in urban or 250K in rural; or passenger train crossing exposure exceeds 800K in urban or 200K in rural	NO	NO	NO	NO	NO	NO	NO	NO
Expected accident frequency for active devices with gates, as calculated by the US DOT Accident Prediction Formula including five-year accident history, exceeds 0.5	NO	NO	NO	NO	NO	NO	NO	NO
Vehicle delay exceeds 40 vehicles hours per day	NO	NO	NO	NO	NO	NO	NO	NO

EXHIBIT CW1.19

DOT #	MILEPOST	LOCATION	CROSSING PROTECTION	CW1.6 DISTANCE TO NEAREST CROSSING	
				NORTH	SOUTH
025-842-U	0194.82	Apache Street	Railroad Crossing Warning Signs	TO REMAIN OPEN	
025-841-M	0194.78	Alley South of Mohave	Railroad Crossing Warning Signs	TO REMAIN OPEN	
025-840-F	0194.75	Mohave Street	2 Gate Mechanisms, GCP4000 & Railroad Crossing Warning Signs	TO REMAIN OPEN	
928-161-M	0193.72	Alley South of Cocopah Street	Railroad Crossing Warning Signs	461	142
025-839-L	0193.69	Cocopah Street	2 Gate Mechanisms, GCP4000 & Railroad Crossing Warning Signs (To be removed)	283	294
928-160-F	0193.66	Alley South of Pima Road	Railroad Crossing Warning Signs	130	470
025-838-E	0193.63	Pima Street	2 Gate Mechanisms & GCP4000 & Railroad Crossing Warning Signs	TO REMAIN OPEN	
025-837-X	0193.51	Yuma Street	Railroad Crossing Warning Signs	613	630
936-631-D	0193.42	Alley South of Buckeye Road	Railroad Crossing Warning Signs	136	1115
025-836-R	0193.39	Buckeye Road	2 Cantilevers, PMD3R & Railroad Crossing Warning Signs	TO REMAIN OPEN	
025-835-J	0193.32	Tonto Street - West	Railroad Crossing Warning Signs	338	328
025-835-J	0193.32	Tonto Street - East	Railroad Crossing Warning Signs	222	456
025-834-C	0193.25	Hadley Street	2 Gate Mechanisms, GCP4000 & Railroad Crossing Warning Signs	TO REMAIN OPEN	
025-833-V	0193.18	Sherman Street	Railroad Crossing Warning Signs	323	343
025-832-N	0193.39	Grant Street	2 Cantilevers, PMD3R & Railroad Crossing Warning Signs	TO REMAIN OPEN	

CW1.5: Type of Crossing Protection

CW1.6: Distance to Nearest Crossing to Remain Open

EXHIBIT CW1.5 & CW1.6

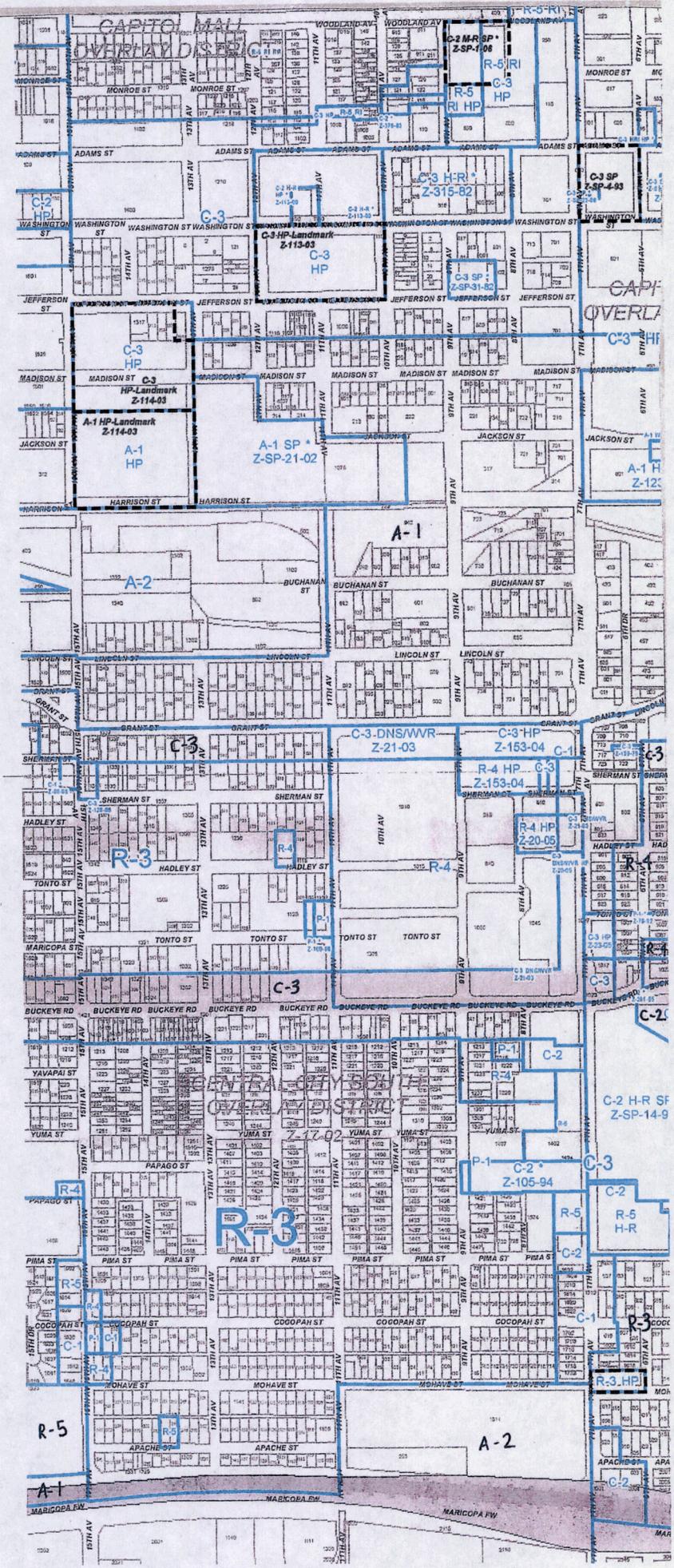
Based on one day observance of a morning train with 15 rail cars, including the engine, the potential vehicle delays are as follows.

LOCATION	GATES	# OF AUTOS	POTENTIAL DELAY TIME
Alley south of Cocopah Street	No gates	0	1 min 15 sec
Cocopah Street	Gates	1	2 min 5 sec
Alley south of Pima Street	No gates	0	1 min 10 sec
Yuma Street	No gates	0	1 min 15 sec
Alley south of Buckeye Road	No gates	0	1 min 10 sec
Tonto Street West	No gates	0	1 min 15 sec
Tonto Street East	No gates	0	1 min 15 sec
Sherman Street	No gates	2	1 min 15 sec
LOCATION	GATES	# OF AUTOS	POTENTIAL DELAY TIME
Alley south of Cocopah Street	No gates	0	1 min 15 sec
Cocopah Street	Gates	1	2 min 5 sec
Alley south of Pima Street	No gates	0	1 min 10 sec
Yuma Street	No gates	0	1 min 15 sec
Alley south of Buckeye Road	No gates	0	1 min 10 sec
Tonto Street West	No gates	0	1 min 15 sec
Tonto Street East	No gates	0	1 min 15 sec
Sherman Street	No gates	2	1 min 15 sec

Where there are no gates, the time was based on when the train first reached the start of the nearest cur return and when the end of the last car based the farthest return

Current Traffic Blocking Delay Per Train

EXHIBIT CW1.20



ZONING MAP

EXHIBIT CW1.9A

400 200 0 400

**ZONING OF PROPERTIES ON 11TH AVENUE
BY AREA AMOUNT**

R-3 = Multiple-Family Residential
R-4 = Multiple-Family Residential
A-2 = Industrial
C-3 = General Commercial
C-3 DNS/WVR = General Commercial Density Waiver
P-1 = Passenger Automobile Parking, Limited

**ZONING OF PROPERTIES WITHIN ¼ MILE
BY AREA AMOUNT**

R-3 = Multiple-Family Residential
R-3 HP = Multiple-Family Residential Historic Preservation Overlay
A-1 = Light Industrial
A-1 HP = Light Industrial Historic Preservation Overlay
A-1 SP = Light Industrial, Special Permit
A-2 = Industrial
C-3 = General Commercial
C-3 DNS/WVR = General Commercial Density Waiver
C-3 DNS/WVR HP = General Commercial Density Waiver Historic Preservation Overlay
C-3 HP = General Commercial Historic Preservation Overlay
R-4 = Multiple-Family Residential
R-4 HP = Multiple-Family Residential Historic Preservation Overlay
C-2 = Intermediate Commercial
C-2 H-R SP = Intermediate Commercial High-Rise, Special Permit
R-5 = Multiple-Family Residential
C-1 = Commercial
P-1 = Passenger Automobile Parking, Limited

ZONING ABBREVIATIONS

EXHIBIT CW1.9B

DOT #	MILEPOST	LOCATION	CW1.1 ADT	CW1.2 LOS
025-842-U	0194.82	Eastbound on Apache Street	162	A
025-841-M	0194.78	Eastbound on Alley South of Mohave	12	A
		Northbound on 11th Avenue between Mohave Street & Apache Street	596	A
		Southbound on 11th Avenue between Mohave Street & Apache Street	608	A
		Northbound on 11th Avenue between Cocopah Street & Mohave Street	787	A
		Northbound on 11th Avenue between Cocopah Street & Mohave Street	539	A
		Northbound on 11th Avenue between Cocopah Street	5	A
928-161-M	0193.72	Eastbound on Alley South of Cocopah Street	5	A
928-161-M	0193.72	Westbound on Alley South of Cocopah Street	533	A
025-839-I	0193.69	Eastbound on Cocopah Street	436	A
025-839-I	0193.69	Westbound on Cocopah Street	765	A
		Northbound on 11th Avenue between Pima Street & Cocopah Street	548	A
		Southbound on 11th Avenue between Pima Street & Cocopah Street	21	A
928-160-F	0193.66	Eastbound on Alley South of Pima Road	0	A
928-160-F	0193.66	Westbound on Alley South of Pima Road	740	A
		Northbound on 11th Avenue between Yuma Street & Pima Street	472	A
		Southbound on 11th Avenue between Yuma Street & Pima Street	139	A
025-837-X	0193.51	Eastbound on Yuma Street	121	A
025-837-X	0193.51	Westbound on Yuma Street	641	A
		Northbound on 11th Avenue between Buckeye Road & Yuma Street	515	A
		Southbound on 11th Avenue between Buckeye Road	0	A
936-631-D	0193.42	Eastbound on Alley South of Buckeye Road	9	A
936-631-D	0193.42	Westbound on Alley South of Buckeye Road	571	A
		Northbound on 11th Avenue between Tonto Street & Buckeye Road	499	A
		Southbound on 11th Avenue between Tonto Street & Buckeye Road	203	A
025-835-J	0193.32	Eastbound on Tonto Street	281	A
025-835-J	0193.32	Westbound on Tonto Street	538	A
		Northbound on 11th Avenue between Sherman Street & Hadley Street	527	A
		Southbound on 11th Avenue between Sherman Street & Hadley Street	139	A
025-833-V	0193.18	Eastbound on Sherman Street	378	A
025-833-V	0193.18	Westbound on Sherman Street	574	A
		Northbound on 11th Avenue between Grant & Sherman		
		Southbound on 11th Avenue between Grant & Sherman	443	A

CW1.1: Current Average Daily Traffic (ADT) Counts

CW1.2: Current Level of Service (LOS)

EXHIBIT CW1.1 & CW1.2

ITEM	COP COSTS	BNSF COSTS	
		CONCRETE PANELS	ASPHALT PAVING
PHASE I – ACTUAL COSTS			
Street Lights - APS	\$61,026.26		
Storm Drain – Banicki	\$97,330.00		
Sidewalks & ADA Ramps - Banicki	\$637,471.51		
Design – Engineering Alliance	\$200,443.00		
Right-of-Way Acquisition - COP	\$177,536.00		
Administration – COP	\$446,646.00		
SUBTOTAL	\$1,620,542.77		

PHASE II – ESTIMATED COSTS			
Design – Engineering Alliance	\$33,688.00		
Administration – COP (actual to date)	\$4,622.00		
Administration – COP (estimated to finish)	\$641,995.20		
Curb and Paving – Banicki	\$802,494.00		
Track Signals – BNSF	\$418,490.00		
Apache Street - BNSF			\$30,250.00
Alley North of Apache Street - BNSF			\$6,875.00
Mohave Street Crossing - BNSF	\$0.00	\$38,503.00	\$38,503.00
Pima Street Crossing - BNSF	\$95,055.00	\$55,826.00	
Buckeye Road Crossing - BNSF	\$121,066.00	\$0.00	
Hadley Street Crossing - BNSF	\$95,055.00	\$55,826.00	
Grant Street Crossing - BNSF	\$92,553.00		
Flagging - BNSF	\$150,000.00		
SUBTOTAL	\$2,455,018.20	\$111,652.00	\$75,628.00
PROJECT TOTAL	\$4,262,840.97		

TOTAL COST OF RAILROAD IMPROVEMENTS

EXHIBIT CW1.14

PHOENIX, ARIZONA
ST87110133: 11TH AVENUE I-17 TO GRANT STREET
RAILROAD CROSSING DATA

RAILROAD CROSSING DATA SHEET

DOT #	MILE POST	STREET NAME	STATUS	START	END	START	END	START	END
025-842-U	0194.82	Apache Street	OPEN	6+10	7+20				
				Asphalt removal and replacement between the rails by BNSF.					
				Asphalt mill and overlay by Phoenix from outside edge of rail to edge to lip of gutter.					
025-841-M	0194.78	Alley	CLOSED OPEN						
				Asphalt removal and replacement between the rails by BNSF.					
				Asphalt mill and overlay by Phoenix from outside edge of rail to edge to lip of gutter.					
025-840-F	0194.75	Mohave	OPEN	9+30	10+70				
				Asphalt removal and replacement between the rails and two outside of rails by BNSF.					
				Asphalt mill and overlay by Phoenix from outside edge of rail to edge to lip of gutter.					
928-161-M	0193.72	Alley	CLOSED						
				Asphalt mill and overlay by Phoenix from outside edge of rail to edge to lip of gutter.					
025-839-L	0193.69	Cocopah Street	CLOSED						
				Asphalt mill and overlay by Phoenix from outside edge of rail to edge to lip of gutter.					
928-160-F	0193.66	Alley	CLOSED						
				Asphalt mill and overlay by Phoenix from outside edge of rail to edge to lip of gutter.					
025-838-E	0193.63	Pima Street	OPEN	15+90	16+93	16+93	17+49	17+49	17+40
				Precast Concrete Crossing Panels Installed by BNSF					
				Paid for by COP					
025-837-X	0193.51	Yuma Street	CLOSED						
				Asphalt mill and overlay by Phoenix from outside edge of rail to edge to lip of gutter.					
936-631-D	0193.42	Alley	CLOSED						
				Asphalt mill and overlay by Phoenix from outside edge of rail to edge to lip of gutter.					
025-836-R	0193.39	Buckeye Road	OPEN	29+10	29+56	29+56	30+44	30+44	30+80
				Precast Concrete Crossing Panels Installed by BNSF					
				Paid for by COP					
025-835-J	0193.32	Tonto Street	CLOSED						
				Asphalt mill and overlay by Phoenix from outside edge of rail to edge to lip of gutter.					
025-834-C	0193.25	Hadley Street	OPEN	36+75	37+22	37+22	37+78	37+78	38+25
				Precast Concrete Crossing Panels Installed by BNSF					
				Paid for by COP					
025-833-V	0193.18	Sherman Street	CLOSED						
				Asphalt mill and overlay by Phoenix from outside edge of rail to edge to lip of gutter.					
025-832-N	0193.39	Grant Street	OPEN	44+10	44+62	44+62	45+50	45+50	45+54
				Precast Concrete Crossing Panels Installed by BNSF					
				Paid for by COP					

Paid for by City of Phoenix - The length of the concrete panels outside of the original street crossing width
 Paid for by BNSF - The length of the concrete panels for the original street crossing width

EXHIBIT C

AERIAL MAP



11TH AVENUE

N
0 0.025 0.05 0.1 Miles
1 inch = 150 feet

Grant Ave to I-17
Between 13th ave and 9th ave

Printed By: vlocum
Print Date: 9/10/2009 8:20:40 AM

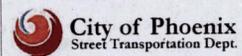
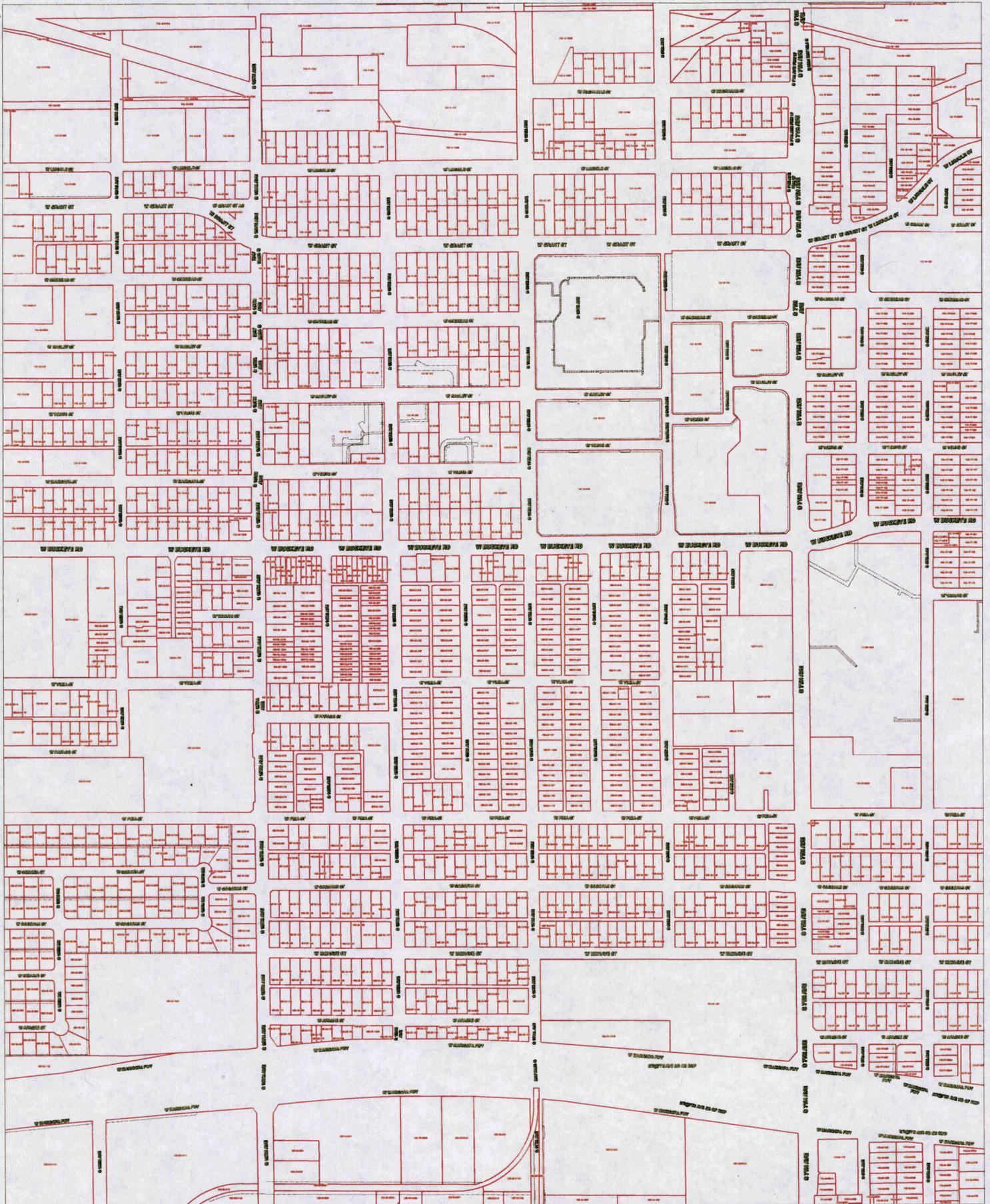


EXHIBIT D

STREET MAP



N
0 0.025 0.05 0.1
Miles
1 inch = 150 feet

Grant Ave to I-17
Between 13th ave and 9th ave

Printed By: skconan
Print Date: 9/10/2009 8:20:40 AM



EXHIBIT E

EXHIBIT F

DRAFT

**GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT
BEWTWEEN BNSF RAILWAY COMPANY AND CITY OF PHOENIX**

GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT

BETWEEN
BNSF RAILWAY COMPANY
AND
CITY OF PHOENIX

BNSF File No. XXXXXXXXXXXXXXXX

11th Avenue

U.S. D.O.T. Nos. 025842U, 025841M, 025840F, 928161M, 025839L, 928160F, 025838E,
025837X, 936631D, 025836R, 025835J, 025834C, 025833V, and 025832N

Railroad Line Segment 7620

Railroad Milepost 0193.39-0194.82

This Grade Crossing Construction and Maintenance Agreement ("**Agreement**"), is executed to be effective as of this _____ day of _____, 2012 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the CITY OF PHOENIX, a municipal corporation of the State of Arizona ("**Phoenix**") (**BNSF and Phoenix may be referred to individually as "Party" or collectively as "Parties"**).

RECITALS:

WHEREAS, BNSF operates a line of railroad in and through the City of Phoenix, State of Arizona;

WHEREAS, in the interest of aiding vehicular travel and public safety, Phoenix is undertaking a project known as the Hope VI Project to improve the existing 11th Avenue, located at BNSF Line Segment 7620, from Milepost 0193.39 to Milepost 0194.82, and designated by cross-street D.O.T. Nos. 025832N (Grant Street), 025833V (Sherman Street), 025834C (Hadley Street), 025835J (Tonto Street), 025836R (Buckeye Road), 936631D (alley), 025837X (Yuma Street), 025838E (Pima Street), 928160F (alley), 025839L (Cocopah Street), 928161M (alley), 025840F (Mohave Street), 025841M (alley) and 025842U (Apache Street), (hereinafter referred to as the "**Crossing**"), by constructing curb adjacent to the existing BNSF track within the existing roadway as indicated on EXHIBIT A, attached hereto and incorporated herein (collectively the "Project" as further defined); and

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I – SCOPE OF WORK

The term "**Project**" as used herein includes any and all work related to the construction of the concrete curb parallel to the tracks and the milling and paving on the 11th Avenue roadway, and crossing closures at U.S. D.O.T. Nos. 025833V (Sherman Street), 025835J (Tonto Street), 936631D (alley), 025837X (Yuma Street), 928160F (alley), 025839L (Cocopah Street), 928161M (alley), and 025841M (alley) by Phoenix and removal/installation of crossing signal activation equipment, construction of new precast concrete crossing surfaces at U.S. D.O.T. Nos. 025832N (Grant Street), 025834C (Hadley Street), 025836R (Buckeye Road), 025838E (Pima Street), and new asphalt concrete surface at 025840F (Mohave Street) and 025842U (Apache Street) by BNSF, more particularly described on EXHIBIT A-3,

including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, preliminary and construction engineering and contract preparation.

ARTICLE II – BNSF OBLIGATIONS

In consideration of the covenants of Phoenix set forth herein and the faithful performance thereof, BNSF agrees as follows:

WHEREAS, the Parties agree that BNSF will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment") that are part and parcel to the Project; and

WHEREAS, Phoenix also desires BNSF to lengthen and install a new concrete panel crossing surface at Hadley Street (025834C), and Pima Street (025838E), and install a new asphalt concrete surface at Mohave Street (025841M) and Apache (025842U); and

WHEREAS, Phoenix also desires BNSF to lengthen the concrete panel crossing surface at Grant Street (025832N) and Buckeye Road (025836R); and

WHEREAS, BNSF is paying for the acquisition and installation of the original length of concrete panel crossing surfaces at Hadley Street (025834C), and Pima Street (025838E).

1. BNSF will furnish all labor, materials, tools, and equipment for railroad track and signal work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on EXHIBIT D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said EXHIBIT D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth. Any item of work incidental to the items listed on EXHIBIT D not specifically mentioned therein may be included as a part of this Agreement upon prior written approval of Phoenix, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad track and signal work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on EXHIBIT C, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Provide and place asphalt beneath the track(s) to provide further sub-grade stability prior to BNSF installing new concrete crossing surfaces; **THIS WAS IN THE ORIGINAL DOCUMENT. IS BNSF GOING TO DO THIS?**
- (f) Installation of concrete and/or asphalt crossing surface for the one track complete with new rail, ties, ballast, fasteners, along with appropriate surfacing, to carry the improved roadways and sidewalks for the length of each crossing as listed in EXHIBIT "A-3";
- (g) Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.

2. BNSF will do all railroad track and signal work set forth in Article II, Section 1 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

3. Phoenix agrees to reimburse BNSF for work of an emergency nature caused by Phoenix or Phoenix's contractor in connection with the Project which BNSF reasonably deems is necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF, upon prior notice to Phoenix to the extent practicable, but without prior approval of Phoenix and Phoenix agrees to fully reimburse BNSF for all such emergency work.

4. During the construction of the Project, BNSF will send Phoenix progressive invoices detailing the costs of the Project performed by BNSF under this Agreement in the recapitulation shown on EXHIBIT D. Phoenix will reimburse BNSF for railroad work completed in a good and workmanlike manner that conforms to prior approved Preconstruction Documents and satisfies all applicable industry customs and standards within thirty (30) calendar days of the date the invoice is received by Phoenix for such work. Upon completion of the Project, BNSF will send Phoenix a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on EXHIBIT D. Pursuant to this section, Phoenix must pay the final invoice within ninety (90) calendar days of the date the final invoice is approved and accepted by Phoenix.

5. BNSF must advise the Phoenix Project Manager, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, BNSF must notify Phoenix Project Manager, in writing, of the date on which BNSF and/or its Contractor will meet with Phoenix for the purpose of making final inspection of the Project.

ARTICLE III – PHOENIX'S OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Phoenix agrees as follows:

WHEREAS, the Phoenix will permanently close the existing 025833V (Sherman Road), 025835J (Tonto Street), 936631D (alley), 025837X (Yuma Street), 928160F (alley), 025839L (Cocopah Street), and 928161M (alley), at-grade crossings.

WHEREAS, Phoenix is paying for the widening of the crossing surfaces at Grant Street, Hadley Street, Buckeye Road, Pima Street; and

WHEREAS, Phoenix is paying BNSF for the acquisition and installation of the extended length of concrete panel crossing surfaces at 025832N (Grant Street), 025834C (Hadley Street), 025836R (Buckeye Road), and 025838E (Pima Street).

1. Phoenix will furnish to BNSF any plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work within the area of BNSF's tracks and marked as EXHIBIT A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.

2. Phoenix will make any required application and obtain all required permits and approvals for the construction of the Project.

3. Phoenix will acquire all rights of way necessary for the construction of the Project.

4. Phoenix will make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

5. Phoenix will construct the Project as shown on the attached EXHIBIT A and do all work ("Phoenix's Work") provided for in the plans and specifications for the Project, except railroad track and signal work that will be performed by BNSF hereunder. Phoenix will furnish all labor, materials, tools and equipment for the performance of Phoenix's Work. The principal elements of Phoenix's Work are as follows:

- (a) Design and Construction of concrete curb adjacent to BNSF's tracks and mill and overlay of asphalt concrete pavement in 11th Avenue.
- (b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
- (c) Installation of advance warning signs in accordance with the MUTCD;
- (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation;
- (e) Provide suitable drainage, both temporary and permanent;
- (f) Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the precast concrete crossing surfaces, and also during the rehabilitation of 11th Avenue and installation of the signal equipment and crossing surfaces;
- (g) Construct asphalt/concrete roadway surface on approaches to each track. Roadway surface will match elevation of the Main Track crossing surface(s). Any concrete curbs will be constructed no closer than 5'-6" (preferably 6'-0") from centerline of each track to provide for a minimum of 11'-0" (preferably 12'-0") opening for track and railroad crossing surface; and
- (h) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF.
- (i) Construct offset sewer manholes.

6. Phoenix must give BNSF's Manager of Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Phoenix, signed by BNSF, and returned to Phoenix, as per EXHIBIT E.

7. Phoenix's Work must be performed by Phoenix or Phoenix's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

8. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of Phoenix, Phoenix shall require the subcontractors to execute EXHIBITS C and C-1. Prior to performing any future maintenance with its own personnel, Phoenix shall: comply with all of BNSF's applicable safety rules and regulations; require any Phoenix employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of EXHIBIT C, a flagger is required to be present; and procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

9. Phoenix must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of EXHIBIT C attached

hereto. Additionally, Phoenix must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work near BNSF tracks.

10. Phoenix must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried in the vicinity of BNSF's tracks. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The Contractor will be responsible for contacting BNSF's Engineering Representative (Richard Barnitz, 505-767-6826) and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The Contractor must also use all reasonable methods when working in the vicinity of BNSF's tracks to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative (Barnitz, 505-767-6826) to stop construction at no cost to Phoenix or BNSF until these items are completed.
- (c) In addition to the liability terms contained elsewhere in this Agreement, the Contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, within the area of BNSF's tracks, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, within the area of BNSF's tracks, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**
- (d) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company (ies) in performing such rearrangements.

11. Phoenix must require their contractor to comply with the obligations set forth in this Agreement, including EXHIBIT C and EXHIBIT C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefore (i) the provisions set forth in Article III; (ii) the provisions set forth in Article IV; and (iii) the provisions set forth in EXHIBIT C and EXHIBIT C-1, attached hereto and by reference made a part hereof.

12. Except as otherwise provided below in this Section 13, all construction work performed hereunder by Phoenix for the Project will be pursuant to a contract or contracts to be let by Phoenix, and all such contracts must include the following:

- (a) All work performed under such contract or contracts in close proximity to BNSF's tracks must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations shall be subject to BNSF's approval;
- (c) No work will be commenced within the area of BNSF's tracks until each of the prime contractors employed in connection with said work has (i) executed and delivered to BNSF and Phoenix a letter of agreement in the form of EXHIBIT C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in Phoenix's best interest, Phoenix may direct that the construction of the Project be done by day labor under the direction and control of Phoenix, or if at any time, in the opinion of Phoenix, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Phoenix may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Phoenix will, at its expense, procure and maintain on behalf of BNSF the insurance required by EXHIBIT C-1; and
- (e) To facilitate scheduling for the Project, Phoenix shall have its contractor give BNSF's Roadmaster thirty (30) calendar days advance notice of the proposed times and dates for work windows. BNSF and Phoenix's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

13. Phoenix must advise the appropriate BNSF Manager Public Projects, in writing, of the completion date of the Project within thirty (30) calendar days after such completion date. Additionally, Phoenix must notify BNSF's Manager Public Projects, in writing, of the date on which Phoenix and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

14. [REDACTED], **ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF PHOENIX, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE PHOENIX, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF PHOENIX, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) PHOENIX'S OCCUPATION AND USE OF THE AREA OCCUPIED BY BNSF'S TRACKS, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY PHOENIX, OR (V) AN ACT OR OMISSION OF PHOENIX OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.**

15. Phoenix agrees to cause its Contractor to name BNSF as co-obligee for a surety bonds in the total amount of the cost of construction for the Project Work performed by Phoenix, and underwritten pursuant to the terms and conditions of Arizona Revised Statutes Sections 34-222 and 34-223.

ARTICLE IV – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the Parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect either Party will be subject to such Party's approval prior to the commencement of any such changes or modifications.
2. The work hereunder must be done in accordance with the EXHIBIT A, EXHIBIT A-1, EXHIBIT A-2, and EXHIBIT A-3 approved by the Parties.
3. Each Party must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The Parties hereto mutually agree that a Party's failure to complete their respective work in accordance with the construction schedule due to inclement weather or unforeseen emergencies will not constitute a breach of this Agreement by such Party and will not subject such Party to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The Parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.
4. Either Party may stop construction work on the Project if any of the following events take place: (i) A Party (or any of its contractors, prosecutes the Project work in a manner which is hazardous to the public, public right-of-way, BNSF facilities or the safe and expeditious movement of railroad traffic; or (ii) the insurance described in the attached EXHIBIT C-1 is canceled during the course of the Project. The work stoppage will continue until all necessary actions are taken by the offending Party or its contractor to rectify the situation to the reasonable satisfaction of the other Party. Each Party's right to stop the work is in addition to any other rights such Party may have including, but not limited to, actions or suits for damages or lost profits. In the event that a Party desires to stop construction work on the Project, the Party agrees to immediately notify the following individual in writing:

To BNSF: **[insert information]**

To Phoenix:

Belinda Cummings
Project manager
1034 East Madison Street
Phoenix, AZ 85034
ofc: (602) 534-7067
fax: (602) 256-4286
belinda.cummings@phoenix.gov

5. Phoenix must supervise and inspect the operations of all Phoenix contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by Phoenix personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its tracks). Construction of the Project will not proceed until Phoenix corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Belinda Cummings for appropriate corrective action.

6 In any action brought under this Agreement, the prevailing Party shall be entitled to recover its actual costs and attorneys fees, as well as other litigation costs, including expert witness fees. The prevailing Party shall also be entitled to recover all actual attorneys' fees and litigation costs incurred in connection with the enforcement of a judgment arising from such action or proceeding. It is further understood and agreed that in the event any dispute arises regarding this Agreement or the terms and conditions hereof, the sole venue for litigation regarding this Agreement shall be in the courts located in Maricopa County, Arizona.

7. All expenses detailed in statements sent to Phoenix pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which guide is hereby incorporated into and made a part of this Agreement by reference. The Parties mutually agree that BNSF's Preconstruction Contract Document costs described in Article II, Section 4 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The construction of the Project will not commence until Phoenix gives BNSF's Manager Public Projects thirty (30) calendar days prior written notice of such commencement. The commencement notice will reference BNSF's file number XXXXXX and D.O.T. Crossing Nos. 025842U, 025841M, 025840F, 928161M, 025839L, 928160F, 025838E, 025837X, 936631D, 025836R, 025835J, 025834C, 025833V, and 025832N and must state the time that construction activities will begin.

9. In addition to the terms and conditions set forth elsewhere in this Agreement, the Parties agree to the following terms upon completion of construction of the Project:

- (a) Phoenix will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the 11th Ave roadway for the back of curb at the tracks to the face of curb at the sidewalk.
- (b) Phoenix will maintain the elevation of the 11th Ave roadway approaches to match the elevation on the railroad track crossing surfaces at the nearest rail.
- (c) Phoenix will maintain the advanced railroad crossing warning signs and pavement losses, solely resulting from and wholly caused by or due Phoenix's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
- (d) Phoenix will do nothing and permit nothing to be done in the maintenance of the 11th Ave roadway, which will interfere with or endanger facilities of BNSF.
- (e) It is expressly understood by Phoenix and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties thereto.
- (f) BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment, Crossing Signal Control House, and the new crossing surfaces from end-of-tie to end-of-tie, in proper condition and the area between the new crossing surfaces, from inside of track curb to inside of track curb
- (g) Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Phoenix or any other governmental

or legislative authority increase the Phoenix's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Phoenix's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.

- (h) If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

10. Phoenix must notify BNSF's Manager of Public Projects prior to inspecting or maintaining areas within close proximity of BNSF's tracks and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in EXHIBIT C and EXHIBIT C-1, as the same may be revised from time to time. Phoenix will be responsible for its contractor(s) compliance with such obligations.

11. Any books, papers, records and accounts of the Parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the Parties hereto, as well as the State of Arizona and the Federal Highway Administration, for a period of one (1) year from the date of the final BNSF invoice under this Agreement.

12. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the Parties hereto. Notwithstanding the preceding sentence, neither Party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other Party.

13. In the event construction of the Project does not commence within one (1) year of the Effective Date, this Agreement will become null and void.

14. Neither termination nor expiration of this Agreement will release either Party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

15. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

16. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Phoenix with respect to the subject matter herein and supersedes any and all other prior agreements between the Parties hereto.

17. This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing signed by both Parties.

18. In the event that anyone or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder.

19. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager Public Projects

740 East Carnegie Drive
San Bernardino, CA 92408

Phoenix:

Belinda Cummings
Project Manager
1034 East Madison Street
Phoenix, AZ 85034

20. This Agreement shall be construed in accordance with the laws of the State of Arizona.

21. The individual(s) executing this Agreement on behalf of, or as a representative for a corporation or other person, firm, partnership or entity, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the corporation, person, firm, partnership or other entity and that this Agreement is binding upon the entity in accordance with its terms.

22. The Parties agree that BNSF is providing the services under this Agreement on a part-time and/or temporary basis and that the relationship created by this Agreement is that of independent contractors. Neither BNSF nor any of BNSF's agents, employees or helpers shall be deemed to be the employee, agent, or servant of Phoenix. Phoenix is interested in only the results obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of BNSF

23. This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in this Agreement. The Parties agree that no individual performing under this Agreement on behalf of BNSF will be considered a Phoenix employee, and that no rights of Phoenix civil service, Phoenix retirement or Phoenix personnel rules shall accrue to such individual. BNSF shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and shall save and hold harmless Phoenix with respect thereto.

24. Pursuant to Arizona Revised Statutes §§ 35.391.06 and 35-393.06, BNSF certifies that it does not have a scrutinized business operation, as defined in Arizona Revised Statutes §§ 35-391 and 35-393, in either Iran or Sudan. If BNSF's certification is found to be false, Phoenix may terminate this Agreement.

25. Phoenix is prohibited by Arizona Revised Statutes § 41-4401 from awarding an agreement to any party who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes § 23-214(A). Therefore, BNSF agrees that:

(A.) BNSF and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with Arizona Revised Statutes § 23-214, subsection A.

(B.) A breach of warranty under paragraph A shall be deemed a material breach of the Agreement and is subject to termination of the Agreement.

(C.) Phoenix retains the legal right to inspect the papers of BNSF or subcontractor employee(s) who work(s) on this Agreement to ensure that BNSF or subcontractor is complying with the warranty under subsection A.

26. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted between the Parties in connection with this Agreement is confidential, proprietary information owned by Phoenix. Except as specifically provided in this Agreement, the parties shall not disclose data generated in the performance of the services to any third person without the prior written consent of the other party, or his/her designee.

27. Personal identifying information, financial account information, or restricted information, whether electronic format or hard copy must be secured and protected at all times to avoid unauthorized access. At a minimum, the parties must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When personal identifying information, financial account information, or restricted information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. (We need to confirm that this is acceptable and technically feasible from BNSF's perspective)

28. In the event that data collected or obtained by either party in connection with this Agreement is believed to have been compromised, the effected party shall notify the other and in the event of Phoenix, the Phoenix Privacy Officer immediately. The party from whom the data has been compromised agrees to reimburse the other for any costs incurred by the non-compromising party to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

29. BNSF agrees that the requirements of these Sections 27 through 31 shall be incorporated into all subcontractor/subconsultant agreements entered into by BNSF. It is further agreed that a violation of these Sections 27 through 31 shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of these Sections 27 through 31 may result in immediate termination of this Agreement without notice.

30. The obligations of the Parties under these Sections 27 through 31 shall survive the termination of this Agreement.

31. The Parties shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on BNSF, a request for an amendment may be submitted.

32. This Agreement is in the nature of a personal services agreement and BNSF shall have no power to assign its rights and obligations under this Agreement without the prior written consent of Phoenix. Any attempt to assign without such prior written consent shall be void.

33. BNSF acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the Client has any financial interest in the consulting firm. For breach of violation of this warranty, Phoenix shall have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.

34. This Agreement is may be canceled by Phoenix for a conflict of interest pursuant to Arizona Revised Statutes §38-511.

Remainder of page left blank intentionally

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____
Printed Name: _____
Title: _____

WITNESS:

CITY OF PHOENIX, an Arizona municipal corporation, David Cavazos, City Manager

By: _____
Printed Name: _____
Title: _____

Attest:

City Clerk

Approved as to form:

Acting City Attorney